

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

In the matter of:

ESSIE S. JOHNSON
(Chapter 13 Case 93-41821)

Debtor

ESSIE S. JOHNSON

Plaintiff

v.

ALLIANCE MORTGAGE
AND INVESTMENT COMPANY

Defendant

Adversary Proceeding

Number 93-4165

FILED

at 2 O'clock & 39 min PM

Date 5-24-94

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

ORDER ON MOTION TO OPEN DEFAULT

Plaintiff filed the above adversary proceeding on October 29, 1993, seeking to set aside a foreclosure allegedly conducted by Defendant, Alliance Mortgage and Investment Company. On November 3, 1993, the Clerk's office issued a Summons and Notice of Pre-Trial Conference, which required Defendant to file its

answer within thirty-five days of the issuance of the summons. A scheduling conference was set for December 22, 1993, at 9:30 a.m. On November 10, 1993, Debtor's counsel, Charles W. Bell, filed a certificate of service reflecting service of the Summons and Notice upon the Defendant by virtue of service on the following individuals at the addresses shown:

Scott C. Mackowitz
130 Stephenson Avenue, Suite 202
Savannah, Georgia 31405

Richard L. Roble
1719 Abercorn Street
Savannah, Georgia 31401

Stephen D. L. Martin
130 Stephenson Avenue, Suite 202
Savannah, Georgia 31405

Sylvia F. Brown, Chapter 13 Trustee
Post Office Box 10556
Savannah, Georgia 31412

United States Trustee's Office
Post Office Box 10487
Savannah, Georgia 31412

At the scheduling conference on December 12, 1993, there was no appearance by or on behalf of Alliance Mortgage and Investment Company, and as a result, I directed the Clerk to enter a default. Thereafter, the Clerk issued an entry of default on January 19, 1994.

On January 25, 1994, a corporation known as Mortgage One, Inc. filed a motion to open default, incorrectly denominated as a Motion to Open Default Judgment and an answer to Debtor's complaint. Mortgage One, Inc. alleges in the Motion that its standing in the case arises out of its status as "successor in interest to Alliance Mortgage and Investment Company, Inc."

On March 25, 1994, a continued hearing to consider the Motion was held, and Plaintiff's counsel introduced certified copies of records of the Secretary of State for the State of Georgia showing that Alliance Mortgage and Investment Company, Inc., had been administratively dissolved as of July 1, 1993. These records further revealed that Alliance's initial registered agent/office was Scott C. Markowitz, 7370 Hodgson Memorial Drive, C-11, Savannah/Chatham County, Georgia 31406. Other certified records from the Secretary of State revealed that Mortgage One, Inc. had been incorporated on March 30, 1992, and that its registered agent/office is Richard L. Roble, JD, PC, 1719 Abercorn Street, Post Office Box 10033, Savannah Georgia 31412.

Subsequent to this hearing and with permission of the court, counsel for Mortgage One, Inc. filed the affidavit of Richard L. Roble. In the affidavit, Mr. Roble states that he was, at one time, the registered agent for Alliance, but that he was no longer the agent when service of this proceeding was attempted upon him. Mr.

Roble further represents that he immediately contacted Debtor's counsel and informed him that he no longer acted as Alliance's agent, that he had refused service of the complaint because he had a potential conflict of interest, that service should be made upon a Mr. Bradley (apparently a former principal of Alliance), that Alliance had been dissolved, and that Mortgage One, Inc. was the successor in interest to all property in which Alliance had held an interest.

Thus, it appears from the above evidence that Debtor attempted to serve someone known as Scott Mackowitz, rather than Alliance's registered agent, Scott Markowitz, at an address which was not the registered office of Alliance. Further, at the time that Debtor served the complaint on Mr. Roble, he was no longer Alliance's registered agent, and due to his representation of Mortgage One, Inc., Mr. Roble did not accept service of the complaint.

Bankruptcy Rule 7055 incorporates F.R.Civ.P. Rule 55(c), which provides that, "for good cause shown the court may set aside an entry of default . . ." F.R.Bankr.P. 7055(c). This provision imposes a very low standard, which is generally met any time a court finds that the default was not the result of gross neglect, that the non-defaulting party will not be substantially prejudiced by the reopening and the party in default has a meritorious defense. See C. Wright and A. Miller, Federal Practice and Procedure, §2697. Whether to allow a party to reopen the entry of default is

within the sound discretion of the trial court. See Jones v. Harrell, 858 F.2d 667, 669 (11th Cir. 1988). A trial court should exercise its discretion in light of all circumstances of the individual situation.

In applying the good cause standard for setting aside an entry of default, courts seem to require a bare minimum showing that vacation of the default entry would serve the interest of justice. In Harrell, the Eleventh circuit held that the District Court did not abuse its discretion when it set aside a tort defendant's default prior to the entry of judgment based upon the defendant's testimony that she received the complaint and gave it to her father with the expectation that he would forward it to their insurance carrier, but the carrier never received the complaint. Jones v. Harrell, 858 F.2d at 669.

In the present case, the confusion created by the dissolution of Alliance and the alleged transfer of all of its interests in its properties to Mortgage One, Inc. hindered both Debtor in attempting to proper service of her complaint, and Mortgage One, Inc., as the apparent true party in interest, in receiving notice of this proceeding. This confusion and lack of proper service of process is sufficient grounds for the court to set aside the entry of default and add Mortgage One, Inc. as a named Defendant in this proceeding.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT
IS THE ORDER OF THIS COURT that entry of default against Alliance Mortgage
and Investment Company be set aside.

FURTHER ORDERED that the Mortgage One, Inc. be added as a
Defendant in this proceeding.

FURTHER ORDERED that Plaintiff perfect service upon Defendant,
Mortgage One, Inc., by service upon Mr. Richard L. Roble, 1719 Abercorn Street, Post
Office Box 10033, Savannah, Georgia 31412.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 23rd day of May, 1994.